

OFFICIAL GAZETTE

GOVERNMENT OF GOA

GOVERNMENT OF GOA

Revenue Department

Notification

No. 22/105/88-RD

Whereas by Government Notification No. 22/105/88-RD dated 19-8-1988 published on page 382 to 383 of Series II, No. 36 of the Official Gazette dated 8-12-1988 and in two newspapers (i) Navprabha dated 30-1-1989 and (ii) Gomantak dated 26-8-1988, it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that the land specified in the Schedule appended to the said Notification (hereinafter referred to as the said land) was likely to be needed for public purpose, viz. Land Acquisition for construction of Lift Irrigation Scheme at Kerim Village on existing Pond.

And whereas, the Government being of the opinion that the acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) and sub-section (4) of section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall, at any time, on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of section 9 of the said Act, take possession of the said land.

Now, therefore, the Government hereby declares under the provisions of section 6 of the said Act, that the said land is required for the public purpose specified above.

2. The Government also hereby appoints under clause (c) of Section 3 of the said Act, the Special Land Acquisition Officer (North) Irrigation Department, Duler - Mapusa to perform the functions of the Collector, North Goa District, Panaji for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer (North), Irrigation Department, Duler Mapusa till the award is made under section 11.

SCHEDULE

(Description of the said land)

Taluka: Satari

Village: Kerim

| Survey No. Sub. Div. No. | Names of the persons believed to be interested | Area in sq. mts. |
|-----------------------------|--|---------------------|
| 1 | 2 | 3 |
| 32/7 | 1. Manoramabai Raujirao Rane and heirs of Raujirao Rane. 2. Ganpat Rauji Jugan. 3. Zaiba Satroji Rane Sardessai. 4. Ramrai Pandarinath Sinai Dubhashi. 5. Krishnarao Satroji Rane Sardessai. 6. Dattajirao Amrutrao Rane Sardessai. 7. Prataprao Nanasaheb Rane Sardessai. 8. Jayaji Nanasaheb Rane Sardessai. 9. Jaisinghrao Venkatrao Rane Sardessai. 10. Indurao Venkatrao Rane Sardessai. 11. Sabaka Bacharam Prabhu Sardessai. 12. Anantrao Dinkarrao Rane Sardessai. | 50.00 |

| 1 | 2 | 3 |
|-------|---|--------|
| | 13. Balasaheb Rausaheb Rane Sardessai. 14. Ganpatrao Balasaheb Rane Sardessai. 15. Tulsibai Bala Rane. 16. Madhavrao Laximanrao Rane Sardessai. 17. Vishwasrao Laximanrao Rane Sardessai. 18. Bagwantrao Laximanrao Rane Sardessai. 19. Ramrao Venkatrao Rane Sardessai. 20. Shripadrao Venkatrao Rane Sardessai. 21. Govindrao Venkatrao Rane Sardessai. T: Parvati Mahadev Naik. | |
| 33/1 | 1. Pramlibai Vishwasrao Rane. 2. Madhavrao Laximanrao Rane. 3. Bagwantrao Laximanrao Rane. | 275.00 |
| 35/8 | O: 1. Manoramabai Raujirao Rane and heirs of Raujirao Rane. 2. Ganpat Rauji Jugan. 3. Zaiba Satroji Rane Sardessai. 4. Ramrai Pandarinath Sinai Dubhashi. 5. Krishnarao Satroji Rane Sardessai. 6. Dattajirao Amrutrao Rane Sardessai. 7. Prataprao Nanasaheb Rane Sardessai. 8. Jayaji Nanasaheb Rane Sardessai. 9. Jaisinghrao Venkatrao Rane Sardessai. 10. Indurao Venkatrao Rane Sardessai. 11. Sabaka Bacharam Prabhu Sardessai. 12. Anantrao Dinkarrao Rane Sardessai. 13. Balasaheb Rausaheb Rane Sardessai. 14. Ganpatrao Balasaheb Rane Sardessai. 15. Tulsibai Bala Rane. 16. Madhavrao Laximanrao Rane Sardessai. 17. Vishwasrao Laximanrao Rane Sardessai. 18. Bagwantrao Laximanrao Rane Sardessai. 19. Ramrao Venkatrao Rane Sardessai. 20. Shripadrao Venkatrao Rane Sardessai. 21. Govindrao Venkatrao Rane Sardessai. T: Shaikh Izak Sheikh Adam. | 47.00 |
| 35/14 | O: 1. Manoramabai Raujirao Rane and heirs of Raujirao Rane. 2. Ganpat Rauji Rane. 3. Zaiba Satroji Rane Sardessai. 4. Ramrai Pandarinath Sinai Dubhashi. 5. Krishnarao Satroji Rane Sardessai. 6. Dattajirao Amrutrao Rane Sardessai. 7. Prataprao Nanasaheb Rane Sardessai. 8. Jayaji Nanasaheb Rane Sardessai. 9. Jaisinghrao Venkatrao Rane Sardessai. 10. Indurao Venkatrao Rane Sardessai. 11. Sabaka Bacharam Prabhu Sardessai. 12. Anantrao Dinkarrao Rane Sardessai. 13. Balasaheb Rausaheb Rane Sardessai. 14. Ganpatrao Balasaheb Rane Sardessai. 15. Tulsibai Bala Rane. 16. Madhavrao Laximanrao Rane Sardessai. 17. Vishwasrao Laximanrao Rane Sardessai. 18. Bagwantrao Laximanrao Rane Sardessai. 19. Ramrao Venkatrao Rane Sardessai. 20. Shripadrao Venkatrao Rane Sardessai. 21. Govindrao Venkatrao Rane Sardessai. T: Latifabi Sheikh Mohammed. | 715.00 |

Total 1087.00

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 26th May, 1989.

Public Health Department

Order

No. 8/28/89-II/PHD

Read: Memorandum No. 5-5-81-PHD(I)/(Part) dated 3-5-1989.

On the recommendation of the Departmental Selection Committee, the Governor of Goa is pleased to appoint Dr. Francis P. Noronha, to the post of Lecturer in Surgery in Goa Medical College, Panaji in the pay scale of Rs. 3000-100-3500-125-5000 (plus N.P.A.) purely on ad-hoc basis with immediate effect initially for a period of one year or till the post is filled on regular basis whichever is earlier subject to the terms and conditions stipulated in the Memorandum cited above.

This appointment shall not bestow on Dr. Noronha a claim for regular appointment and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in the grade and for promotion to the next higher grade.

The appointment is made against the post of Lecturer in Surgery held by Dr. Dilip Amonkar who has been promoted.

Dr. Noronha has been declared medically fit by the Medical Board of Goa Medical College.

This order is issued pending verification of his character and antecedents.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 15th May, 1989.

Order

No. 8-24-89-II/PHD

Read: Memorandum No. 5-5-81-PHD(I)Part III dated 5-4-1989.

On the recommendation of the Departmental Selection Committee, the Governor of Goa is pleased to appoint Dr. Praveen K. Gupta to the post of Lecturer in Neuro Surgery in the Goa Medical College, Panaji in the pay scale of Rs. 3000-100-3500-125-5000 (plus N.P.A.) purely on ad-hoc basis with immediate effect initially for a period of one year or till the post is filled on regular basis whichever is earlier subject to the terms and conditions stipulated in the memorandum cited above.

This appointment shall not bestow on Dr. Gupta a claim for regular appointment and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in the grade and for promotion to the next higher grade.

This appointment is made against the post of Lecturer in Neuro-Surgery vacated by Dr. Ajay Gehlot who resigned from the post.

This appointment is subject to his being declared fit by the Medical Board of Goa Medical College, Panaji and verification of his antecedents and character.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 16th May, 1989.

Order

No. 7/7/87-I/PHD

On the recommendation of the Local Selection Committee the below mentioned officers are appointed on ad-hoc basis to the post of Public Health Dentist in the pay scale of Rs. 2200-75-2800-EB-100-4000/- (plus N.P.A.) under the Directorate of Health Services for a period of one year or till the post is filled on regular basis whichever is earlier and posted at the places shown against their names, with immediate effect under the terms and conditions contained in

the Government Memorandum No. 7/7/87-I/PHD dated 26-4-1989:—

| Sr.No. | Name of the Doctor | Designation and place of posting |
|--------|---|---|
| 1. | Dr. (Miss) Genelina Maria da Piedade Pinto. | Public Health Dentist, Primary Health Centre, Canacona. |
| 2. | Dr. (Miss) Pragati Kishor Verekar. | Public Health Dentist, Primary Health Centre, Bicholim. |
| 3. | Dr. (Miss) Sujata Bakal. | Public Health Dentist, Primary Health Centre, Valpoi. |

The appointment will not bestow on the officers a claim for regular appointment and the services rendered on ad-hoc basis in the grade shall not count for the purpose of seniority in that grade or eligibility for promotion to the next higher grade.

Dr. (Miss) Pragati K. Verekar and Dr. (Miss) Sujata Bakal have already been medically examined by the Medical Board, Goa Medical College, Panaji.

Their appointments are subject to the verification of their character and antecedents and medical fitness in respect of Dr. (Miss) Maria Genelina da Piedade Pinto.

By order and in the name of the Governor of Goa.

L. J. Menezes Pais, Under Secretary (Health).

Panaji, 22nd May, 1989.

Department of Labour

Order

No. 28/1/83-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 17th October, 1988.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No. IT/16/83

Workmen — Party I/Workmen
V/s
M/s Super Structure Pvt. Ltd. — Party II/Employer
Workmen represented by Adv. Mario Pinto Almeida.
Employer represented by Adv. M. Bandodkar.

Panaji, dated 3-9-1988.

AWARD

This is a reference made by the Government of Goa by its order No. 28/1/83-ILD dated 7th March, 1983 with an annexure scheduled thereto which reads as follows:

I. "Whether the action of the employer, M/s. Super Structure Private Limited, Margao, Goa in closing down the establishment w. e. f. 31-12-1982 is legal and justified?

If not, to what relief the workmen are entitled to?"

II. "Whether the following demands of the workmen raised with the employer, M/s. Super Structure Private Margao, Goa contained in the Charter of Demands dated 1-1-1982 by the Goa Trade and Commercial Workers' Union are justified?"

CHARTER OF DEMANDS

Demand No. 1: Revision of existing pay-scale after the merger of the existing Flexible Dearness Allowance with the existing Basis as drawn on 31st December, 1981.

Demand No. 2: Flat Wage Rise.

Demand No. 3: Fitment Formula.

Demand No. 4: Variable Dearness Allowance (V.D.A.)

Demand No. 5: House Rent Allowance.

Demand No. 6: Conveyance Allowance.

Demand No. 7: Subsidised Canteen.

Demand No. 8: Painters' and Welders' Allowance.

Demand No. 9: Shops' rainware uniforms, lockers and Fans.

Demand No. 10: Bhatas for drivers and those who go out on work of the Company.

Demand No. 11: Uniforms to be laundered/washing allowance.

Demand No. 12: Supplementary demands as raised by the workers at the time of discussion in the Industrial Tribunal.

If so, what relief the workmen are entitled to and from which date?"

2. The Government reference comprises of two parts. The first part relates to the closure of M/s Super Structure Pvt. Ltd., w.e.f. 31-12-1982 and as per the reference part No. 1 the Government desires this tribunal to declare whether the closure is legal and justified. As per the reference clause No. 1 if the closure is not legal and justified this Tribunal is to declare what reliefs the workmen are entitled to. This is the first part of the reference. The second part of the reference relates to the several demands raised by the workmen with the employer of M/s. Super Structure Pvt. Ltd., and these demands are contained in the charter of demands dated 1-1-1982 made by the Goa Trade & Commercial Workers' Union. As per Part No. 2 of the reference the Tribunal has to find out whether the demands made by the workmen through the union are justified and Part No. 2 is appended with charter of demands from Serial No. 1 to 12. This is how after the Tribunal comes to a conclusion that the charter of demands is justified then only it has to declare what reliefs the workmen are entitled to and from which date. This is how the original Government reference dated 7th March, 1983 stands and after the case was registered the notices were issued to the parties and the parties appeared in the matter.

3. The Party No. I namely the workmen has filed the Claim Statement on 6th May, 1983 wherein the history of the Opponent/Employer together with the sister units is given. According to the workmen M/s. Super Structure Pvt. Ltd., is a factory registered under the Factories Act. According to them the company is incorporated as a Pvt. Ltd., company controlled by the close relations and friends of the family. The history of the establishment of the company is also given in the claim statement. According to the claim statement the company known as M/s. Narcinva Damodar Naik which was a partnership concern was in existence prior to the Liberation of Goa. The main activities of this partnership co., was trading namely dealership for Goa, Daman and Diu region for sale of Mercedes Benz vehicles. After liberation, the Company lost the agency and even the Mercedes Benz Company was named and styled as Tata Mercedes Benz. The Company thereafter started taking orders for the chassis of the vehicles. The Company also shifted its working area from Pajifond, Margao to Arlem and started activities. In the year 1972 apart from selling of chassis, construction of bodies of the said chassis also was undertaken by the Company. The same workmen were working in the new concern of body building between 1972 to 1975. Thereafter in the year 1975 a corporate body under the name and style of M/s. Super Structure Pvt. Ltd., was formed. All the necessary machinery used for the purpose of building of the body of vehicles was shifted from the M/s. Narcinva Damodar Naik to M/s. Super Structure

Pvt. Ltd. Similarly, the workmen who were employed under Narcinva Damodar Naik for the purpose of building the bodies of the vehicles were also shifted to M/s. Super Structure Pvt. Ltd. The employees working with M/s. N. D. Naik had been continued for the service but they were brought on the rolls of M/s. Super Structure Pvt. Ltd., and the supervision that was being exercised over them except in the change of title of the Company. However, the basis and the basic form of work, conditions of employment both in relation to wages etc., were the same and the new concern started working in the name and style of M/s. Super Structure Pvt. Ltd., since 1975 as shown by the claim statement by the workmen themselves. There is also a reference to the two other concerns of the Naik family named and styled as M/s. Pradeep Enterprises, and M/s. Ashvek Motors, all the four concerns being the family concerns of the Naik family. For the new concern of Super Structure new machinery was purchased such as one electric Pressing Machine, Rolling Machine, two welding Transformers, three Hand Drilling Machines taken from N. D. Naik. The workers of the four concerns got themselves united on 29-10-1981 and elected a Committee known as Narcinva Damodar Naik and Super Structure Pvt. Ltd., Workers' Committee. The matter of the formation of the union was conveyed to the management on 30th October, 1981. Thereafter on 1st January 1982 the charter of demands were served on the management. The matter went into negotiation. Thereafter agitations started and after the Labour Commissioner drawn a failure report on 30-12-1982 the management declared lock-out of all the four units on 10th January, 1983. The question then is whether the lock-out was declared on 10th January, 1983 or whether there was a closure of one of the 4 concerns namely M/s Super Structure Pvt. Ltd., w.e.f. 31-12-1982 as per the part one of the Government reference. According to the workmen the action on the part of the employer/company w.e.f. 31-12-1982 is a coloured or painted lock-out to show that it is an act of closure and this lockout is aimed at victimization and punishment of the workmen for their having organised trade union compelling the management to submit to their demands or the charter of demands. This is the main contention raised by the workmen and it has to be seen what the management has to say as regards its action of the alleged closure of the Unit M/s. S. S. P. L., w.e.f. 31-12-1982.

4. In the written statement filed on 29-7-1983 the employer/management refers to the two parts of the reference and then takes basic objection to Part No. 1 of the reference stating that the same is not maintainable and is bad in law for the four reasons given below:

(a) The item (1) of the Schedule to the order of reference relates to legality and justifiability of the action of the Company in closing down its establishment at Arlem w.e.f. 31-12-1982 and since the legality and justifiability of the closure cannot be the subject matter of adjudication under the established case law, the Government has acted without any jurisdiction or in excess of its jurisdiction;

(b) Under Section 25 FFF of the Industrial Disputes Act, 1947, "industrial dispute" is conceivable only in the matters related to the compensation. Since the Company has effected and or offered the payment of compensation as required in the said section, no dispute can survive in law;

(c) While referring the dispute for adjudication, the Government has failed to apply its mind to the provisions of law relating to the closure of the establishment;

(d) Since the matter of closure cannot be the subject matter of judicial scrutiny as per established case law, this Hon'ble Tribunal, with respect, has no jurisdiction whatsoever to adjudicate on the said order of reference.

5. According to the management of the Company the reference relates to legality and justifiability of the action of the management and according to them the closure cannot be subject matter of adjudication under the Established law and the Government has acted without any jurisdiction or in excess of its jurisdiction. This is the first basic objection to the reference.

By referring to Sec. 25 FFF of the Act relating to industrial dispute the management submits that the same relates to compensation and according to them after the closure the Company has effected or offered the amount of compensation as required under the Sec. and as such no dispute survives in law.

The 3rd objection is that the Government has failed to apply its mind to the provisions of law relating to the closure of the establishment while making the reference.

The 4th objection taken by the management is that as per the established case law the Industrial Tribunal has no jurisdiction whatsoever to adjudicate the closure making it subject to judicial scrutiny and the reference itself is out of the jurisdiction of this Tribunal.

6. The above 4 basic and legal objections were taken by the management in the written statement and as presently I am dealing with part No. 1 of the reference by treating it as a preliminary issue, I am not referring to the other part of the written statement. There is then the rejoinder filed on behalf of the workmen dated 1st October, 1983. Thereafter my Predecessor framed the following issues on 8-2-1984 with reference to the Order of reference and the issues read thus:

1. Whether the employer proves that this reference is bad in law and not maintainable for the reasons mentioned in para 3 a) to d) of the Written Statement?

2. Whether the employer proves that this reference is also bad in law and not maintainable for the reasons mentioned in para 4 and 5 of the Written Statement?

The issue No. 1 relates to the basic objection taken by employer in para 3 sub. para (a) to (d) which I have noted in the foregoing paragraphs. Issue No. 2 relates to the objection taken in para. No. 4 & 5 of the written statement. It relates to the maintainability of the reference and the jurisdiction of the Tribunal. These two issues are set out as preliminary issues and submissions are made on behalf of the parties on these two issues. The roznama shows that my Predecessor felt that in view of the basic objection to the reference itself and as the order of reference is challenged by the employer my Predecessor directed that the Government be joined as a party to the proceeding and passed the order on 9-11-1983 for the say of the Government on 5-12-1983. It appears from the roznama that the Government was duly served but no body appeared on behalf of the Government and the roznama shows that the matter was directed to proceed ex-parte against the Government on 11-4-1984 and the matter was adjourned for settlement of issues on 8-2-1984 and the issues were framed accordingly and those two issues framed by my Predecessor were set out for preliminary hearing. In the meantime another development took place and the Union by its application dated 12-3-1984 had requested my Predecessor to frame additional issues and my Predecessor by a speaking order dated 19-11-1984 stated that additional issues suggested by the Union on behalf of the workmen are already covered by the two preliminary issues and there is no need of framing fresh issues on the same point and consequently he dismissed the application and set out the case for evidence. The roznama further shows that on 11-12-1985 representatives of the workmen made oral arguments while the representative of the employer filed written arguments a copy of which was given to the representative of the workmen and the matter stood adjourned for orders as regards the preliminary issues but the matter went on sine die list and after I took over, the matter was again set out from that stage for hearing the submissions on the preliminary issues. The arguments were heard on 12-4-1988 and 23-4-1988 and lastly on 9-5-1988. The oral submissions made before me at the bar as well as the written arguments are filed by referring to different cases of the Supreme Court as well as different High Courts. I am therefore called upon to record the finding on these preliminary issues regarding the closure of the Company and whether the Tribunal has jurisdiction to record a finding whether the closure is just and legal in the circumstances of the case.

7. The stand taken by the Opponent management in this reference is to hold in as much as placing strong reliance on the case of closure, the management makes out a positive case that the Government reference is bad ab-initio and this point has been made explicitly clear in para. 3A and B1 of the written statement filed as back as on 29-7-83. According to the Company the preliminary issues were framed on 8-2-84 mainly covering the basic objections taken in para. 3A & 3B of the written statement and the main aspect which is propounded before me is "whether the closure is justifiable". Here the stress is on the factum of closure and according to the management there is closure simpliciter and this aspect has been fully considered by the Government while making the reference. According to the management the reference is so clearly worded that the same does

not admit of any doubt. At the cost of repetition I shall reconsider the particular portion of the reference which states "whether the action of the employer in closing down the establishment w.e.f. 31-12-82 is just legal or not". Here the meaning of the word 'closing' has to be considered in the common parlance and it is urged before that by using the word 'closing' the Government pre-supposed that there was factually a closure and the Government, wanted this Tribunal to record its finding whether this closure w.e.f. 31-12-82 is just and legal in the circumstances of the case. It appears that even while reading this reference in the plain language my Predecessor entertained the same doubt and he by his order dated 9-11-83 observed that "as the employer has challenged the maintainability of the order of reference I direct that the Government be joined as a party to the proceeding and the say of the Government be filed on 5-12-83 at 2.30 p. m.". It is seen from record that the Government though duly served with the notice of the court, chose to remain neutral in the matter and left the reference as it was leaving the Tribunal to hear the parties to the reference on the maintainability of the reference and the matter continued and the submissions are being made by the workmen on one part and the management on the other part and what is being considered is the maintainability of the very order of reference made by the Government.

8. The discussion is therefore confined to the interpretation of the word 'closure' and strong reliance is placed on behalf of the management on the different cases and the main case relied upon is the case of Pottery Mazdoor Panchayat v/s The Perfect Pottery Company Limited and another, reported in 1979 Lab. I. C. page 827. This is a Supreme Court case and the question of the jurisdiction of the Tribunal was being questioned and the terms of reference indicated that there was a closure of business and the question was whether the Industrial Dispute could be raised in the matter. During the course of the judgment the Supreme Court in the judgment delivered by the then Chief justice Chandrachud J. has observed that "the very term of reference shows that the points of dispute between the parties was not the fact of closure of business but the propriety and justification of the decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing down the business the workers were locked out by the management"—After considering these aspects the Supreme Court further observed that "the references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the terms of the references, had no jurisdiction to go behind the fact of closure and inquire the question whether the business was in fact closed down by the management. With these observations the Supreme Court held that the propriety of or justification for the closure of a business, in fact and truly effected, cannot give rise to an industrial dispute as contemplated by the State and Central Acts. Be it noted here pertinently that the term of reference of the Madhya Pradesh Government in the matter of the Company at Jabalpur was similar to the term of reference made by the Government of Goa in this case. I find that the facts in the Jabalpur case are even more favourable to the management in as much as the term of reference state "whether the proposed closure by the management of the Perfect Pottery company Limited, Jabalpur of their Pottery factory at Jabalpur with effect from July 1, 1967, is proper and justified"? A careful analysis of the above term of reference will show that closure w.e.f. July 1, 1967 was in contemplation of the management of the Perfect Pottery Company to which the workers Union had taken objection and the Tribunal was called upon to enquire the question whether the business was in fact closed down by the management. With these facts and even when the closure of the business was in contemplation Supreme Court has held that the propriety or definition of the closure of a business cannot give rise to an industrial dispute as contemplated by the Acts or law. Hence the essence of the observations by Supreme Court is that the closure of a Unit by a Company is just justifiable and the Tribunal had no jurisdiction to decide the question of the legality or otherwise of the closure on contemplation. In that case before the impugned date of July 1, '67 there was a correspondence between the Managing Director of the Company and the Labour Union and the matter was pending before the Regional Labour Commissioner dealing with the contentions made by the union in its letter of June 22, 1967.

The Supreme Court was considering the definition of closure in Sec. 2(a) of the said Act according to which 'closure' to the extent material means the closing of any place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, whether such closing, suspension or refusal is or is not in consequence of an industrial dispute. The Supreme Court felt that the concept of 'closure' in the State Act is wider than what is commonly understood by that expression.

9. By considering this definition and the provisions of Sec. 82 of the Act the High Courts has come to a conclusion that the two Tribunals for the two references had no jurisdiction to go behind the references and inquire into the question whether the closure of business, which was in fact effected, was decided upon for reasons which were proper and justifiable. The propriety of or justification for the closure of a business, in fact and truly effected cannot raise an industrial dispute as contemplated by the State and Central Acts. For these reasons the Supreme Court felt that the second part of the reference namely payment of retrenchment compensation was beyond the scope of the appeal and in that case in the mean time the parties had arrived at a settlement on the question of retrenchment compensation. Hence the Supreme Court allowed the workers to receive retrenchment compensation and thereafter to withdraw the applications if any filed by them for relief in that behalf. This is how the appeal to the Supreme Court made by the Labour Union was dismissed.

10. It is felt that the facts and the circumstances in the case of Pottery Mazdoor Panchayat discussed above are almost similar to the facts in the present case. In the Pottery Mazdoor Panchayat case the matter of closure was in contemplation of the management w.e.f. July 1, 1967 which means that the management had not in fact closed down the factory at the time of the reference. Even then, the High Court felt that the closure was not justifiable and this view was up held by the Supreme Court and while upholding this view the Supreme Court have also relied on an earlier judgment in the case of Management of Express Newspapers Limited V. Workers and staff Employees, reported in 1962-IT L.L.J. Page 227. Therein the Supreme Court has observed that "in fact and in substance the closure of the business is a lock-out and the business has been apparently closed for the purpose of disguising a lock out and a dispute is raised in respect of such a closure it would be an industrial dispute which an Industrial Tribunal is competent to deal with". In that case the Supreme Court have then observed that "there can be, with respect, be no quarrel with this proposition but the true question which arises for consideration is whether in the instance case there was any dispute at all, whether there was in fact a closure or whether the management purported to close the business as a cloak or disguise for what in fact and substance was a lockout. As we have shown earlier no such dispute was even raised, the limited dispute which was raised by the appellant being whether the closure of the business was effected for the proper and a justifiable reason". The Supreme Court have already held in both these cases that when there is in fact a closure the question is immaterial whether the closure of business is a cloak or disguise but when the factum of closure is proved the question whether the closure is proper and justifiable will not arise and it cannot give rise to an industrial dispute in view of the definition of the term 'closure' in Sec. 2(a) of the Industrial Dispute Act.

11. The term Closure is amply discussed in Sec. 25FFF of the Act. This Section lays down that when an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year before such closure shall be entitled to notice and compensation etc. according to Sec. 25F of the Act, as if the workman had been retrenched. The term closure has not been actually defined in the Act. The term therefore has to be understood in its ordinary connotation. According to Webster's Dictionary, Dictionary, 'closure' means, 'abringing of some activity to a stop'. The Supreme Court in the case of Indian Leaf Tobacco Development Co. Ltd., reported in 1970, I.L.L.J. 343 has observed that "the closure may be treated as stoppage of part of the activity or business" of the employer.

12. The sum and substance of the legal opinion about closure is that there should be stoppage of business and the functioning of the concern should come to an end. The management of Party II had made out a positive case

that the functioning of the Unit has stopped and the Unit is not functioning at all. While countering this claim on behalf of the Union it is submitted that there is no factual closure but this is just white wash. For the purpose they want to rely on the circumstances namely that the closure is said to be effective from 31-12-82 while actual lockout is declared on 10-1-83 whereunder all the four Units were locked out. It is further submitted that the management did not just stop by declaring the lockout but had also filed a Civil Suit to get an injunction against the workmen regarding slogan shouting etc. The copy of the notice of lockout is on record and I have carefully gone through it and I did not find that there is any statement showing that there was no closure prior to that. Regarding this notice it is submitted on behalf of the management that the management had asked a couple of workers to work even after 31-12-82 because even after closure some sundry work had remained to be done like machinery and other equipments which were to be shifted and this by itself does not mean that the Unit had started working. There is considerable force in these submissions made on behalf of the management. When the Union was asked to point out whether the activities of the Unit had really started, the Union had not reply to this. On the contrary it is pointed out to me that the management while acting fair to the workman, the notice dated 29-10-82 u/s 25FFF was issued and the workmen were offered compensation along with the service certificate. According to the management the service certificate was being issued to enable the workmen to get alternative employment else where consequent upon the retrenchment. About the retrenchment compensation the management has produced positive evidence on record and this evidence has to be taken into consideration to see whether there was factually a closure or whether the activities of the Unit are still going on. A list of as many as 34 workmen is produced in the case papers on 23rd April, 1988 showing that those workers of Super Structure Pvt. Ltd., had accepted their final settlement and had opted out of the Unit to have a service elsewhere. It is no doubt true that another list of 50 workmen produced along with this list shown that they have refused the final settlement. This shows that the workmen are a divided lot and what is to be considered in the Government reference is whether the charter of demands made by the Union on their behalf is justified or not. When the Unit is closed and half of the workmen have already accepted the compensation and have opted out it appears that no useful purpose would be served by considering the demands for revision of pay scales. It appears that the question of demands need not be considered because what is to be considered is the compensation to be granted by the management in the event of retrenchment and the management has been saying from the beginning that the workmen are entitled to compensation and they are prepared to pay the sum under a negotiation. The Unit of N. D. Naik was established in 1896 but the Unit of Super Structure Pvt. Ltd. a body building concern was established in 1975 and as shown by the management this Unit has been closed w.e.f. 31-12-1982 and as seen from the legal opinion the closure when complete cannot be subject to judicial scrutiny and the reference appears to be improper because under the reference part I, the Tribunal is called upon to say whether this closure is legal and justified or not. According to the Union his right to property is not a fundamental right as article 31 is deleted and closure cannot be taken as of right holding it to be a fundamental right. There is voluminous case law including the above cases which shows that the management has a right to close down its Units and if closure causes harassment to the workers who have put up a continuous service for a particular period the provisions u/s 25 of the I.D.A. come into play and what become relevant for consideration is the pay for notice period, gratuity and retrenchment compensation to which the workers are entitled to. In the instant case the management has not only offered the retrenchment compensation but the management has paid the same to nearly half of the workers of the Unit. This aspect has to be taken into consideration to see whether the management has established that they have really closed down the Unit or not. The offer of compensation and payment of the compensation to nearly half workers can be taken as a circumstance which go along with the factum of closure and the filing of the Civil Suit for injunction will not necessarily mean that the Unit was still working and the workmen were still on the roll. The Union was pointedly asked to point out whether this particular unit is functioning even now and they have no evidence to show that the Unit is functioning today. This Tribunal has to take over all account of all events and circumstances

because the charter of demands is made as back as on 1-1-82 and while the question of considering the charter of demands was under consideration of the management it took a decision to close down the Unit w.e.f. 31-12-82 and the facts on record establish that the Unit has factually closed down. Consequently while answering Part I of the reference it has to be held as proven fact that the Unit has actually closed down w.e.f. 31-12-82. Even the Government reference pre-supposes that the Unit had closed down w.e.f. 31-12-82 and what the Government reference desires this Tribunal to find out is whether the closure is legal and justified. As per the legal opinion discussed in the foregoing paragraphs the question of legality of the closure of the Unit is not justifiable and is not open to judicial scrutiny. This being the aspect of the case the answer to Part I of the reference will have to be in the negative and consequently the question to answer Part II of the reference does not survive for consideration at all. The Government reference fails on the first part only and there is no question of recording a finding on the bonafides or other charter of demands which were made much before the closure of the Unit. The charter of demands do not survive for consideration at all in view of the above finding of Part I of the Government reference. The order of my Predecessor had made the Government a party to these proceedings but I feel that the Government had made the reference and it was left with the tribunal to find out whether it can record a finding as to whether the closure is legal and justified or not and so on question of making a Government a party to the dispute does not arise at all. The legality or otherwise of the closure of the unit is a matter between Union of the workmen and the management of M/s Super Structure Pvt. Ltd., and as stated above this closure is complete in all respects and this Tribunal cannot record a finding about its legality or otherwise because this Tribunal has no jurisdiction to do so. In the result, I pass the following order:

ORDER

It is hereby held that the management of M/s Super Structure Pvt. Ltd., Margao, Goa have closed down their establishment w.e.f. 31-12-1982 and as such this Tribunal is unable to declare whether the closure is legal and justified as the Tribunal has no right to do so. Consequently the workmen are not entitled to any relief consequent upon the closure of the Unit. However, as obitor it is hereby declared that the workmen are entitled to retrenchment compensation and other benefits as required u/s 25FFF of the

I.D.A. and those workmen who have not so far accepted the retrenchment compensation and other benefits are at liberty to accept the same as the management had made an open offer to the workmen to accept the same. The workmen are not entitled to any other relief in this reference.

About Party II of the reference "the question whether the charter of demands made by the Goa Trade & Commercial Workers' Union on 1-1-1982" does not survive for consideration because after the charter of demands the Unit is closed down w.e.f. 31-12-1982. Hence the Tribunal does not record any finding on the charter of demands made by the Union.

The above reference which is in two parts is answered accordingly and the award be communicated to the Government for information.

In the circumstances of the case, there shall be no order as to costs.

S. V. Nevagi
Presiding Officer
Industrial Tribunal

Finance (Revenue and Control) Department

Notification

No. 10-2-88-Fin(R&C)

In exercise of the powers conferred by sub-clause (iv) of clause (g) of section 2 of the Goa Money Lenders Act, 1977 (Act 7 of 1977) (hereinafter referred to as 'said Act'), the Government of Goa hereby specifies the Housing Development Finance Corporation Limited, Bangalore as an authority for the purpose of the said sub-clause (iv) of clause (g) of section 2 of the said Act.

By order and in the name of Governor of Goa.

K. M. Nambiar, Under Secretary (Fin. Exp.)

Panaji, 19th April, 1989.

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